

# **Exhibit 4**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 CASE NO. 18-MD-2865 (LAK)  
4

5 IN RE: )  
6 )  
7 CUSTOMS AND TAX ADMINISTRATION OF )  
8 THE KINGDOM OF DENMARK )  
9 (SKATTEFORVALTNINGEN) TAX REFUND )  
10 SCHEME LITIGATION )  
11 )  
12 )  
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C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL  
EXAMINATION OF  
GRAHAM WADE

DATE: March 16, 2022

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 potentially be one thing that you would want  
2 to take into account.

3 Q The HMRC is the party who  
4 ultimately decides whether tax is due on  
5 particular transactions or income.

6 Right?

7 MR. OXFORD: Objection to the form.

8 A Unfortunately, that's incorrect. I  
9 believe it's -- it's the law, and ultimately  
10 the courts that decide what tax is due.

11 But they are the administrative  
12 branch of the tax system.

13 Q Okay. And so the ultimate question  
14 of whether tax is due is a legal one.

15 Right?

16 MR. OXFORD: Objection to form.

17 A Again, that's quite a wide-ranging  
18 question. So to be more precise in my  
19 answer, I think you need to narrow it down a  
20 bit.

21 But certainly in the U.K., taxes  
22 paid under tax law, and the question of how  
23 to interpret that tax law, is ultimately a  
24 question for the courts.

25 Q Okay. Are you aware of any similar

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1 I do not believe I expressed legal opinions  
2 in the report.

3 Q Okay. We agree that you've not  
4 expressed legal opinions in the report.

5 Right?

6 MR. OXFORD: Objection to form.

7 A As I said, my opinions in my report  
8 are the opinions taken as a whole and they're  
9 my opinions, so.

10 Q Okay. Can you go to Paragraph 9 on  
11 Page 3, please?

12 At the end of the second line, can  
13 we agree that you wrote, "I do not express  
14 legal opinions in this report?"

15 A Sorry. Just let me read it.  
16 Paragraph 9?

17 Q Correct.

18 A (Witness reviewing.)  
19 Yeah.

20 Q Okay. And you are not expressing  
21 legal opinions on securities law in this  
22 report.

23 Right?

24 A I'm expressing opinions about my  
25 understanding of the facts of the transaction

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1 and my experience as a financial practitioner  
2 in the securities markets.

3 Q Okay. But you're not expressing  
4 legal opinions on the securities laws in this  
5 report.

6 Right?

7 A I'm expressing --

8 MR. OXFORD: Objection to form.

9 A I'm expressing my view on the  
10 facts. It's not my place to, you know,  
11 determine the legal consequences of  
12 those -- of my opinions.

13 Q Okay. I'm just asking you a  
14 yes-or-no question.

15 You're not expressing legal  
16 opinions on securities law in this report.

17 Right?

18 A Well, I've said I do not express  
19 legal opinions in this report, so.

20 Q Okay. And likewise, you're not  
21 expressing legal opinions on tax law in this  
22 report.

23 Right?

24 A Correct.

25 Q Okay. You're not expressing legal

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1 opinions on principles of Danish tax  
2 administration in this report.

3 Right?

4 MR. OXFORD: Objection to form.

5 A I have expressed no opinions  
6 whatsoever on the practices of Danish tax  
7 administration.

8 Q Okay. If we go back to Paragraph 1  
9 now on Page 1 -- are you there?

10 A Yeah.

11 Q Okay. If you look at the last part  
12 of the sentence after the semicolon, it says,  
13 "and whether the financial transactions  
14 executed by the various defendants would  
15 entitle an entity or individual to a  
16 dividend."

17 Do you see that?

18 A I see that.

19 Q So we just established that you're  
20 not expressing legal opinions in this report.

21 Right?

22 A I don't believe I need to express a  
23 legal opinion to -- for example, in the case  
24 of the Solo transactions, to conclude if  
25 there's no shares and there were no

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1 shares, and so there were no dividends.

2 And so I think that's a fairly  
3 straightforward conclusion to draw from my  
4 study of these transactions.

5 Q Okay. Other than for the trades  
6 that you say were used for more than one tax  
7 voucher -- withdrawn. Let me re-ask that  
8 question.

9 Other than trades for which you say  
10 shares were used to support more than one tax  
11 voucher, is there any other basis for  
12 concluding that any of the ED&F transactions  
13 did not entitle the pension plans to  
14 dividends?

15 MR. OXFORD: Objection.

16 A There are a number of -- as I said,  
17 all of the bases for my opinions are included  
18 in my reports and they should be taken as a  
19 whole. So if you have a question on a  
20 specific one, I'm very happy to answer it.

21 But it's a combination of all the  
22 factors that I've covered in my report taken  
23 together.

24 Q Okay. Can you tell me what those  
25 factors are? Can you summarize them for me?

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1 MR. OXFORD: Objection to form.

2 A Okay. Well, apart from  
3 the -- apart from the absence of shares, the  
4 other most fundamental reason, although, as  
5 I've said, there are others in my report, is  
6 that the nature of the way the cum ex  
7 transactions were structured is that even if  
8 there had been shares, it would still not  
9 have been the receipt of the dividend. It  
10 would have been a receipt of a dividend  
11 compensation payment.

12 Q Okay. And whether something is a  
13 dividend or a dividend compensation payment,  
14 that's informed by legal principles.

15 Right?

16 MR. OXFORD: Objection to form.

17 A I think it's formed by an  
18 understanding of the market practice that  
19 relates to security financing and equity  
20 finance transactions.

21 Q Okay. So it's your testimony that  
22 whether something is a manufactured dividend  
23 or a real dividend or a dividend compensation  
24 payment is not informed by any legal  
25 principles?



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1 transactions.

2 And it's for all the reasons given  
3 in my report.

4 Q Okay. The transactions that you  
5 analyzed in your report, are you aware of any  
6 regulations that impact, in the securities  
7 contract, whether the securities contract did  
8 or did not intend to confer a dividend right  
9 on the buyer?

10 MR. OXFORD: Objection to form.

11 A Well, I think the -- the reasons,  
12 I've given a number of reasons in my report  
13 as to why I concluded that the nature of the  
14 transactions between the parties were not  
15 intended to deliver a dividend to the pension  
16 plan, the overriding one of which is there  
17 weren't shares to support the dividend and  
18 that the pricing clearly indicated that the  
19 seller did not receive a dividend. And so  
20 the seller could not have entered into a  
21 transaction intending to sell a dividend that  
22 it didn't actually have.

23 But there are a range of other  
24 factors that I've taken into account in  
25 arriving at those conclusions. And again,

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1     it's all the facts and circumstances taken  
2     together.

3             And the regulatory status and  
4     market conduct rules that apply to these  
5     transactions were relevant in understanding  
6     the facts and circumstances of what actually  
7     happened.

8             Q     Okay. Which regulations are you  
9     referring to at the end of that last answer?

10            A     Well, if you --

11            MR. OXFORD: Object to form.

12            A     If you -- you know, if you want me  
13     to go back through my report and identify all  
14     the regulations that I've considered in  
15     arriving at my conclusions, I'm happy to do  
16     that. But I've -- you know, at various  
17     points I've discussed, you know, market  
18     conduct regulations, transaction reporting  
19     regulations, you know, short-selling  
20     regulations, Prudential capital regulations.

21            There's a wide range -- because you  
22     have to understand the nature of the, you  
23     know, what the counterparties could and  
24     couldn't have done, and how sophisticated  
25     financial institutions transact with each

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1 other.

2 So all of those are relevant in  
3 terms of understanding what the nature of the  
4 securities transactions between the cum ex  
5 seller and ED&F Man was.

6 Q Mr. Wade, respectfully, I'm asking  
7 you specifically about the securities  
8 contract.

9 Can you identify for me one example  
10 of a regulation that you're aware of that  
11 dictates whether or not a securities contract  
12 intends or does not intend to confer a right  
13 to a dividend on a buyer?

14 MR. OXFORD: Objection, asked and  
15 answered.

16 A And I'm respectfully telling you  
17 that your question is misplaced. Because in  
18 order to understand the nature of the  
19 transaction between the two counterparties,  
20 one needs to understand all the facts and  
21 circumstances and what's the regulatory  
22 status, what the market conduct rules were.

23 And for all the reasons I have  
24 given in my report, it is clear to me that  
25 the transactions were not intended to deliver

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1 a real dividend to the pension plan because  
2 there were no shares and there were  
3 no -- there were no real dividends to pass  
4 on.

5 So -- but that requires a full  
6 understanding of all the facts and  
7 circumstances, which includes all the  
8 regulations I've cited to in my report.

9 Q Okay. And so you've outlined a  
10 number of ED&F Man transactions in the  
11 context of your report.

12 For any of those ED&F transactions,  
13 can you identify any regulation that is  
14 relevant to whether the terms of the  
15 securities contract between ED&F and its  
16 counterparty did or did not intend to confer  
17 the right to a dividend?

18 MR. OXFORD: Object to the form.

19 A As I've said, my job is to  
20 understand all the facts and circumstances  
21 around each of the transactions that I've  
22 looked at, and understand the nature of how  
23 they executed those transactions, how they  
24 hedged them, how they priced them, what the  
25 relevant regulations that applied to the

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1 counterparties were, and for all the reasons  
2 I have given in my report.

3 It is clear to me that the nature  
4 of those transactions were that they  
5 were -- that they did not deliver dividends  
6 to the pension plans.

7 Q So the answer to my question is  
8 "no?"

9 MR. OXFORD: Object to the form.

10 A I don't actually remember what your  
11 previous question was, but I don't think my  
12 answer was "no. "

13 But maybe you can remind me what  
14 the previous question was.

15 Q I asked you, given that you've  
16 outlined a number of ED&F Man transactions in  
17 the context of your report, whether, for any  
18 of those transactions, you can identify any  
19 single regulation that is relevant to whether  
20 the terms of the securities contract between  
21 ED&F and its counterparty did or did not  
22 intend to confer a right to a dividend?

23 MR. OXFORD: Objection, asked and  
24 answered.

25 A And my response to that is that in

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1 order to arrive at my conclusion about what  
2 the nature of the transactions were between  
3 the cum ex sellers and the pension plans, I  
4 need to understand the full facts and  
5 circumstances. And that includes the  
6 regulatory rules that applied to the various  
7 counterparties and market conduct  
8 regulations.

9 And that is all as detailed in my  
10 report.

11 Q And that's your complete answer to  
12 the question that I asked?

13 MR. OXFORD: Object to the form.

14 A Yeah, I think I've been clear on  
15 what my answer to the question is.

16 Q All right. If ED&F were to take  
17 the position in this litigation that "a share  
18 is acquired or disposed of at the time when a  
19 final and binding agreement exists on the  
20 acquisition or disposal of the share," would  
21 you agree with that?

22 MR. OXFORD: Objection to the form.

23 A Sorry? If ED&F Man were to take  
24 what position?

25 Q The position in this litigation

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1       that "a share is acquired or disposed of at  
2       the time when a final and binding agreement  
3       exists on the acquisition or disposal of the  
4       share," would you agree with that?

5               MR. OXFORD: Object to the form.

6               A     And for what? In what context?

7               Q     I'm asking you, as a general  
8       principle of securities trading, whether or  
9       not you would agree with the principle that  
10      "a share is acquired or disposed of at the  
11      time when a final and binding agreement  
12      exists on the acquisition or disposal of the  
13      share?"

14              MR. OXFORD: Objection to the form.

15              A     Well, there's a number of terms in  
16      that question that would need to be a bit  
17      more precisely defined. For example, for  
18      what purpose do you mean "disposed" and what  
19      do you mean by "disposed?"

20              So I -- I don't think I'm able to  
21      agree with that or necessarily disagree with  
22      it.

23              Q     Okay. Would you agree or disagree  
24      with the principle that "the ownership right  
25      in the share is transferred at the time that

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1 a final and binding agreement exists on the  
2 acquisition or sale of the share?"

3 MR. OXFORD: Object to the form.

4 A No, I wouldn't. Again, I wouldn't  
5 agree with that one because I don't think  
6 that's right in terms of when ownership  
7 rights associated with shares do change  
8 hands.

9 But I would also ask you to be a  
10 bit more precise in defining what you mean by  
11 "ownership rights."

12 Q Would you agree with the principle  
13 that "a buyer of a share owns the share at  
14 the time when a final and binding agreement  
15 exists on the acquisition of the share?"

16 MR. OXFORD: Object to the form.

17 A No.

18 Q Would you agree with that statement  
19 if I told you that that principle is being  
20 advanced by me in the context of Danish tax  
21 law?

22 MR. OXFORD: Object to the form.

23 A I think, as I've stated earlier,  
24 I'm not expressing opinions as to Danish tax  
25 law. So I would -- I would not have an



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1 opinion on that question as it relates to  
2 Danish tax law.

3 Q Okay. Would you agree that when a  
4 final and binding agreement to acquire a  
5 share exists, that the buyer is therefore the  
6 only person liable to taxation in respect to  
7 any dividend that's received?

8 MR. OXFORD: Object to the form.

9 A Well, firstly, the -- you need to  
10 define the circumstances that relate to that,  
11 what tax jurisdiction you're talking about,  
12 what the circumstances of the trade are.

13 And so, on its face, I can't really  
14 answer that.

15 Q Okay. If I specify Denmark as a  
16 jurisdiction, would that help you?

17 MR. OXFORD: Object to the form.

18 A Well, then, I'm not here to  
19 express, and I don't believe I've expressed  
20 any opinions in my reports as to Danish tax  
21 law and how that would apply to any  
22 particular transaction.

23 Q How about on securities  
24 transactions in Denmark? Do you consider  
25 yourself to be expressing an opinion on

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1           A     I'm sorry — sorry to do this, but  
2     right at the end of your question, it broke  
3     up, so I didn't hear the end of the question.

4                     Can you repeat it again?

5           Q     No problem. If you ever need me to  
6     repeat a question, I'm happy to do that.

7                     Do you understand anything about  
8     what VP Securities' involvement in paying a  
9     dividend to holders of Danish shares that are  
10    listed on Danish exchanges is?

11                    MR. OXFORD: Object to the form.

12           A     Well, as I've said, it is my  
13    understanding that VP Securities maintains  
14    the ultimate share register. And so, at the  
15    point in time, i.e. the record date, it is  
16    VP Securities who ultimately confirms the  
17    underlying record holders and will therefore  
18    be involved in directing the payment from the  
19    issuing company to those record holders.

20                    Obviously, in many cases, those  
21    record holders will be a custodian or  
22    sub-custodian. So VP Securities is not the  
23    only person involved in that process, but  
24    they do have an important role in there.

25           Q     Okay. And do you understand that

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1 VP Securities satisfied its role to direct  
2 the dividends to the proper party if it paid  
3 the amount of the dividends to the person on  
4 the register?

5 MR. OXFORD: Object to the form.

6 A I understand that from the issues  
7 perspective, it pays the dividend to the  
8 holders of record as determined by  
9 VP Securities. But that may not necessarily  
10 be the end of the process, because, as I  
11 said, there's other — they'd most likely be  
12 custodians, sub-custodians, and a number of  
13 other things involved in the overall process.

14 Q Okay. And you would agree with the  
15 fact that the person on the register is not  
16 necessarily the person who ultimately had the  
17 right to receive the dividend?

18 MR. OXFORD: Object to the form.

19 A Yeah, I'd agree with that, yeah.

20 Q Okay. And would you agree with the  
21 fact that where the person on the register  
22 was not the one who ultimately had the right  
23 to receive the dividend, that the person to  
24 whom VP Securities paid the dividend would  
25 have received it on behalf of the actual

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1 legal owner of the shares?

2 MR. OXFORD: Object to the form.

3 A That requires making a series of  
4 assumptions about who the holder on  
5 the -- who the holder of record actually was,  
6 and what their -- what are all the  
7 circumstances surrounding that particular  
8 holder of record.

9 But as I've said, in general, it  
10 would typically be a custodian or  
11 sub-custodian who was the holder of record at  
12 the level of VP Securities. And so one would  
13 need to fully understand in what capacity the  
14 custodian is holding those shares in order to  
15 determine what happens once the payment gets  
16 to that custodian.

17 Q Okay. Would you agree with the  
18 principle that the legal owner of the shares  
19 is the one who ultimately receives the  
20 dividends, who's liable to taxation on the  
21 dividend, and who's suffered WHT?

22 MR. OXFORD: Object to the form.

23 A There's such a wide-ranging number  
24 of terms in that. And it's so general that,  
25 no, I would not agree as a general --

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1 have -- you know, there are a whole range of  
2 different forms of legal ownership.

3 So I need you to be a bit more  
4 precise.

5 Q Okay. Is it your understanding  
6 that what it means to own a share depends on  
7 the legal circumstances in which you're  
8 asking that question?

9 MR. OXFORD: Objection to form.

10 A Again, the question of what  
11 ownership means for the particular purposes  
12 in which that question's asked, I need to  
13 know what purposes it's asked, and all the  
14 facts and circumstances that surround that  
15 particular share.

16 So if you give me a specific  
17 example, I can give you my thoughts.

18 Q Is it your testimony that you're  
19 unable to tell me, as a general principle,  
20 what it means to be a legal owner of a share  
21 in Denmark?

22 MR. OXFORD: Objection.

23 A What I'm saying is that over the  
24 course of my career I spent a long time and I  
25 understand that the question you're asking me

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1 can be a much more complex question than it  
2 appears because it requires understanding the  
3 exact facts and circumstances, for what  
4 purpose, i.e., you know, is it tax, is it  
5 accounting, is it regulation, is it, you  
6 know, record holder from the issuer's  
7 perspective?

8           There's a range of different ways  
9 in which one can think about who the owner of  
10 a share is. And without the full facts and  
11 circumstances and the specifics and for what  
12 purpose the question is being asked, I -- I  
13 can't answer it.

14           Q   Is it your understanding that the  
15 legal owner of a share can be a different  
16 person in different circumstances?

17           MR. OXFORD: Object to the form.

18           A   It would be highly unusual if a  
19 given share for the same -- going back to my  
20 point about there are different  
21 purposes -- if we're talking about a specific  
22 definition of "ownership," in my experience,  
23 it would be highly unusual if two people can  
24 be the same owner of the share for the same  
25 purpose.

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1 Q What about whether two people can  
2 be the same owner of the share for different  
3 purposes?

4 MR. OXFORD: Sorry. Just let me --  
5 let me get my objection in, please,  
6 Mr. Wade.

7 So can you just repeat that  
8 question, Greg?

9 MR. PRUDEN: Yeah. There was an  
10 error in my question anyway, so let me  
11 re-ask it.

12 Q What about whether two people can  
13 be the owner of the same share for different  
14 purposes?

15 MR. OXFORD: Object to the form.

16 A That's possible, yeah.

17 Q Okay. What's your understanding  
18 that the owner can be a different person in  
19 different circumstances based on?

20 MR. OXFORD: Object to the form.

21 A My -- over the course of my career,  
22 you know, as I said, you've got accounting  
23 regulation, you've got nominee ownership. It  
24 is possible and I've seen instances over the  
25 course of my career where the owner for one

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1 of those can be different from another owner.

2 Q Can you give me an example?

3 A Yeah. So for accounting purposes,  
4 you know, I mean, in most cases, the nominee  
5 owner is the custodian taking Danish  
6 securities. The custodian registered with  
7 VP Securities would be the nominee owner for  
8 accounting purposes.

9 It's quite unlikely that that  
10 person is the accounting owner of the shares.  
11 It's possible they are, but it's unlikely.

12 Q Okay. You use the word "owner" a  
13 lot, but you didn't really refer to a legal  
14 owner. Just let me re-ask the question.

15 Is it your testimony that the  
16 accounting owner of a share is equivalent to  
17 being a legal owner of a share?

18 MR. OXFORD: Object to the form.

19 A It depends -- again, it depends for  
20 what purpose and what your definition of  
21 "legal owner" of a share is, which I don't  
22 know what you mean.

23 So I can't really answer that  
24 question.

25 Q Okay. Would you agree with the



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1           Asked and answered.

2           A     I'm saying, and I think it's been  
3     my consistent response, that "legal  
4     ownership" can mean a number of different  
5     things in a number of different contexts, and  
6     that without the context or precision on  
7     exactly for what purpose you're asking it, I  
8     can't answer that.

9                     So if you want to give me a very  
10    specific example of a trade, and then a very  
11    specific definition of what you mean by  
12    "legal ownership," I will do my best to  
13    answer it.

14          Q     In the transactions that you  
15    analyzed in this case, when did the buyer of  
16    the shares become the owner of the shares?

17                     MR. OXFORD: Object to the form.

18          A     It's the same point. For what  
19    purpose do -- what do you mean by "owner?"

20                     Do you mean nominee owner? Do you  
21    mean tax owner? Do you mean accounting  
22    owner?

23                     There are lots of different  
24    definitions.

25          Q     Is it your testimony you can't tell

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1 me what it means to be an owner of a share?

2 MR. OXFORD: Objection, asked and  
3 answered.

4 A It is my testimony that in order to  
5 answer that question, I need to understand  
6 the context in which you're asking that  
7 question, and all the facts and circumstances  
8 surrounding that particular transaction.

9 Q Okay. And so you have no general  
10 definition available to you of what it means  
11 to be the owner of a share?

12 MR. OXFORD: Objection to form.

13 A My position is, as I've explained  
14 earlier, that over the course of my career  
15 working in structured finance, I'm well aware  
16 that what it means to be the owner of a  
17 security can take a number of different  
18 meanings, and that precision is required.

19 And like I said, if you give me a  
20 precise set of facts and a precise definition  
21 of what you mean by the particular type of  
22 ownership, I will do my best to answer it.

23 Q Okay. For the purposes of making a  
24 tax application in Denmark, in the  
25 transactions that you analyzed in this case,

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1                   And my opinions are fundamentally  
2     that those three statements are false. But I  
3     have offered no opinion as to, you know, what  
4     the Danish tax consequences of -- as a result  
5     of that are.

6           Q     Okay. Well, you said that -- you  
7     told me in response to a question that I  
8     asked you, Mr. Wade, whether and in what  
9     context I was using the term "ownership"  
10    would inform your answer to my question.

11                   I'm not asking you about opinions  
12    that you provided or not. What I'm asking  
13    you right now is whether you understand that  
14    for the purpose of making a tax reclaim in  
15    Denmark, when, in a securities transaction,  
16    the ownership would transfer from the seller  
17    to the buyer?

18                   MR. OXFORD: Object to the form.

19           A     And my response is that given the  
20    opinions that I gave and the fact that I am  
21    not giving opinions on Danish tax law, I have  
22    not given an opinion on the question of what  
23    the precise conditions required are to obtain  
24    a Danish tax reclaim.

25                   But it's my opinion that the three

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1 key pieces of information on the tax voucher,  
2 which I understand to have formed a very  
3 important part of that tax group claim, in my  
4 opinion, and based on my review, and for all  
5 the reasons given in my report, that  
6 information is false. So it seems highly  
7 unlikely to me that that would mean that the  
8 person is the owner for Danish tax purposes.

9 But that is not something I've  
10 expressed an opinion on.

11 Q Okay. For the purposes of  
12 determining whether a payment made from a  
13 seller to a buyer in reference to a dividend  
14 is a dividend or a manufactured dividend,  
15 when do you understand that legal ownership  
16 transfers in a securities transaction from  
17 the seller to the buyer?

18 MR. OXFORD: Object to the form.

19 A I just don't think that's a  
20 question that makes sense on its own terms.

21 A -- as I think I defined in my report, a  
22 dividend compensation payment is a  
23 contractual payment that arises under a  
24 transfer -- a contract for the transfer of  
25 securities.

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1                   So I -- I don't think that your  
2                   question makes sense on its own terms.

3               Q     Okay. Well, that's your  
4                   understanding of the definition of  
5                   "manufactured dividends?"

6               A     Amongst other things, and, as laid  
7                   out in my reports, extensive experience over  
8                   the course of my career in understanding  
9                   equity finance transactions.

10            Q     What is the definition of  
11               "manufactured dividends?"

12            A     I think -- I think I just gave a  
13               definition which is, I believe, the one I  
14               used in my report, which is it's a  
15               contractual payment representative of a  
16               dividend that arises under a contract for the  
17               transfer of securities.

18                   That, I think, is the generally  
19               accepted definition based on my market  
20               practice.

21            Q     And what determines whether a  
22               payment that's representative of a dividend  
23               is, itself, a dividend or a manufactured  
24               dividend?

25                   MR. OXFORD: Object to form.

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1           A     Well, I think -- I don't -- I don't  
2     really understand that question because my --  
3     under my definition, which I think is the --  
4     well, I know, based on my market practice, is  
5     the accepted market definition of a dividend  
6     compensation payment -- a dividend  
7     compensation payment is a contractual payment  
8     made under the contract for transfer of  
9     securities.

10           So it's definitionally not a  
11     dividend.

12           Q     Okay. So your testimony is that a  
13     payment that's made from the seller to a  
14     buyer of securities can never represent a  
15     real dividend?

16           MR. OXFORD: Object to the form,  
17     misstates his testimony.

18           A     That's -- that's not what I said.

19           Q     Okay. Is it your testimony that a  
20     contractual payment that represents a  
21     dividend from the seller to a buyer of shares  
22     is always a manufactured dividend?

23           MR. OXFORD: Object to the form.

24           A     I don't think I said that. I  
25     defined -- I gave my definition, which is the

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1 generally accepted market definition, that a  
2 dividend compensation payment -- or a  
3 manufactured dividend, if you prefer that --  
4 is a contractual payment made under contract  
5 for the transfer of securities.

6 Q Okay. And can that ever be  
7 considered a real dividend?

8 MR. OXFORD: Object to the form.

9 A For what purpose?

10 Q For the purposes of determining  
11 whether the payment received is a dividend?

12 MR. OXFORD: Object to the form.

13 A Well, my understanding of the term  
14 "dividend" is a dividend is a payment from an  
15 issuing company made to a shareholder in  
16 respect of that person's being the owner of  
17 shares in a company.

18 So, in that sense, a dividend and a  
19 manufactured dividend, as I've previously  
20 just defined them and are included in my  
21 report, cannot be the same thing under  
22 those -- as defined for those purposes.

23 Q Okay. Well, how do you determine  
24 whether somebody is the owner of shares in a  
25 company?

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1 MR. OXFORD: Object to the form.

2 A Again, I'm going to ask you to  
3 define for what purpose.

4 Q Mr. Wade, I'm using your words.  
5 You told me a second ago that your  
6 understanding of the term "dividend" is "a  
7 dividend is a payment from an issuing company  
8 made to a shareholder in respect of that  
9 person being an owner of shares in a  
10 company. "

11 What do you mean when you say that  
12 the person is the "owner of shares in a  
13 company" in that context?

14 A Okay. In that particular context,  
15 I mean that the person is the -- in whatever  
16 format that particular -- depending on the  
17 articles of association of that company and  
18 whatever form the register is held, that that  
19 person is, at the time when the dividend  
20 right accrues, i.e., the record date, that  
21 person is the record holder on the company's  
22 share register, and that the issuing company  
23 pays the dividend to.

24 Q Okay. So if you are not on the  
25 share register, you are not the owner of the



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1 shares.

2 Is that your testimony?

3 MR. OXFORD: Object to the form.

4 A No, that's a -- that's completely

5 different because you've expanded my -- I

6 said for the purposes of knowing -- in

7 defining "dividend," I have defined

8 "shareholder" in the way I just defined it.

9 I didn't say anything about who the  
10 owner of the shares is, because that could  
11 mean -- depending on what the context is and  
12 what circumstances are, "owner" is a very  
13 broad term that can mean all kinds of things.

14 Q Okay. And so, for the purposes of  
15 determining who receives a dividend, the  
16 owner is synonymous with the person on the  
17 share register.

18 Is that your testimony?

19 MR. OXFORD: Object to the form,  
20 asked and answered.

21 A You asked me to define "dividend."  
22 I defined it as being -- in the way that I  
23 did.

24 And then that requires -- the  
25 dividend is paid by the issuing company to

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1 the shareholder of record on the record date,  
2 and the shareholder of record is the person  
3 who, in whatever format the shareholder  
4 registry is maintained, is the person who is  
5 on the record at that time.

6 That was the purpose -- that is a  
7 definition in which I've defined "dividend,"  
8 and for those purposes, that's what I mean by  
9 "shareholder."

10 Q I asked you about the definition of  
11 "owner." I'm asking you whether the  
12 definition of "owner," for the purposes of  
13 determining whether you received a dividend,  
14 is synonymous with the person on the share  
15 register?

16 MR. OXFORD: Objection.

17 A And I did not give a general  
18 definition of "owner." You asked me for a  
19 definition of "dividend" which I gave.

20 And for those purposes, the owner  
21 of the shares is the person who's on the  
22 register, but only for those purposes. Maybe  
23 for other purposes as well, but I'm just  
24 being very precise on -- as I said, you know,  
25 across the course of my career, I have

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1 learned that it's very important that the  
2 definition of "owner," "legal owner," all  
3 these kind of terms can have a number of  
4 different meanings in different contexts.

5 So I'm just trying to be very  
6 precise.

7 Q Okay. So your definition of who  
8 receives a dividend is the person on the  
9 share register?

10 Full and final answer?

11 MR. OXFORD: Object to the form.

12 A I think I actually defined  
13 "dividend" as being a payment by the issuer  
14 company. That was -- that was what I was  
15 defining.

16 And the issuer company pays it to  
17 the person who is on the shareholder register  
18 at the date of record that the company  
19 determines the dividend will be paid.

20 Q Okay. I'm asking you, for the  
21 purposes of determining who is deemed to have  
22 received a dividend, what determines who is  
23 the owner of the share on which the dividend  
24 is paid?

25 MR. OXFORD: Object to form.

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1           A     I'm sorry, but you just introduced  
2     the word "deemed" there, so deemed for what  
3     purpose? What's the context? What's the  
4     transaction?

5                 I just -- my experience over many  
6     years involved in structured finance  
7     transactions is that precision is required.  
8     And so, if you give me precision, I will do  
9     my best to answer.

10          Q     Okay. I want to go back to what  
11     you told me again, and that's that "the  
12     dividend is a payment from an issuing company  
13     made to a shareholder in respect to that  
14     person being an owner of shares in a  
15     company. "

16                 I'm asking you whether being an  
17     owner of shares in a company in that context  
18     is synonymous with being on the share  
19     register?

20                 MR. OXFORD: Object to the form.

21          A     For the purpose -- in the way I  
22     defined what a dividend is, the dividend is a  
23     payment made by the issuing company to the  
24     person -- we can call them the owner for  
25     these purposes -- who is on the shareholder

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1 register on the record date.

2 So, for these purposes, "owner"  
3 means the person on the shareholder register.  
4 But "owner" in any other context may well  
5 have a completely different meaning.

6 Q Okay. And for these purposes, when  
7 does the person who is considered to be the  
8 owner -- using your definition  
9 again -- become the owner?

10 MR. OXFORD: Object to the form.

11 A It would depend on the full details  
12 of the article of association of the company  
13 and exactly how it works. But in simple  
14 terms, it would be when whoever the registrar  
15 for the company is puts that person onto the  
16 shareholder register as being the current  
17 owner of that share.

18 Q Do you reference the details of the  
19 articles of association of any of the Danish  
20 issuers whose transactions you analyzed in  
21 this case?

22 MR. OXFORD: Object to the form.

23 A No, but that's not necessary in the  
24 context of understanding these particular  
25 transactions because, first of all, the

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1 specific definition that we've been talking  
2 about I don't think is actually relevant to  
3 any of my opinions.

4 And secondly, it's my  
5 understanding, based on a combination of  
6 market practice and the documents I've  
7 reviewed in this case, that the nominee  
8 holder of a share on the record date is  
9 determined by VP Securities and what register  
10 they maintain, which is the ultimate and only  
11 record of who the nominee holder of the share  
12 is, but purely for the purposes of defining  
13 who the issuing company pays a dividend to.

14 Q Okay. Have you reviewed any  
15 documents in this case that would indicate to  
16 you who was the owner of a share?

17 MR. OXFORD: Object to the form.

18 A I'm sorry, but you're just using  
19 the phrase "owner," and I think I've been  
20 clear that unless you're precise about what  
21 you mean by ownership, I can't give an answer  
22 to that.

23 Q Okay. As a matter of general  
24 English, have any documents you've reviewed  
25 in this case offered you any opinion on who

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1 is an owner of a share?

2 MR. OXFORD: Object to the form.

3 A As I said, based on my extensive  
4 experience over many years in the structured  
5 finance industry, it would be very imprudent  
6 of me to use the general English meaning of  
7 "owner" when we're talking about securities  
8 transactions where "owner" may well be  
9 defined in a number of different ways  
10 depending on what the situation and the  
11 context and the facts are.

12 Q Okay. And have any of the  
13 documents you reviewed in this case formed a  
14 basis for your opinion as to who is  
15 determined to have received a dividend paid  
16 by an issuer?

17 MR. OXFORD: Object to the form.

18 A My -- my opinions are as they are  
19 covered in the report in detail, and all the  
20 facts and circumstances and the documents  
21 that I've relied on are as covered in my  
22 report. So if there's a specific aspect of  
23 that that you'd like to go through, I'm happy  
24 to.

25 Q Okay. Can you give me one example

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1 MR. OXFORD: Object to the form,  
2 asked and answered.

3 A My -- my opinions on the recycling  
4 are as laid out in my reports. And for all  
5 the transactions that I have reviewed, and  
6 based on contemporaneous evidence from  
7 ED&F Man, a study of the settlement records,  
8 it is my opinion that that is a technique  
9 that was being used to settle the  
10 transactions for all the reasons laid out in  
11 my report.

12 Q Okay. I want to know whether your  
13 opinion about the pension plan's right to a  
14 dividend on the specifically non-annex E  
15 cum ex transactions that you analyzed is  
16 based on anything other the recycling of  
17 shares.

18 MR. OXFORD: Objection to form.

19 A It's based on all the reasons I  
20 give in my report, which is that is one of  
21 the reasons, but it's not the only reason.

22 Q Can you say more than that about  
23 what the basis is for your opinion that the  
24 non-annex E cum ex transactions did not  
25 confer a right to a dividend right now at



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1 this deposition?

2 MR. OXFORD: Object to the form.

3 A Yeah. So amongst the other  
4 reasons, and the full reasons are given in my  
5 report, the pricing clearly indicates that  
6 the cum ex sellers were not transferring a  
7 real dividend.

8 And it's further my view that on  
9 all the facts and circumstances that are  
10 relevant to me reaching my decision, there  
11 are no -- there are no particularly  
12 meaningful differences between the non-annex  
13 E cum ex transactions and the annex E cum ex  
14 transactions other than in the case of the  
15 annex E cum ex transactions, MPT Dubai, it  
16 was an internal IDB, and in the non-annex E  
17 cum ex transactions, it was an external IDB.

18 That -- and that's the -- you know,  
19 there are other -- there are other facts and  
20 circumstances that I have taken into account,  
21 but that's the essence of why I don't think  
22 there's any meaningful difference between the  
23 two types of transaction, in addition to the  
24 share recycling.

25 Q Okay. So is it your -- withdrawn.

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1 to my question, "Are there any other reasons  
2 that you can tell me as you sit here today?"

3 MR. OXFORD: Object to the form,  
4 asked and answered.

5 A Yeah. My answer to that question  
6 is that all the reasons are contained across  
7 my three reports, and that if you want to  
8 discuss any of those specific reasons, I'm  
9 very happy to.

10 Q Okay. But I would have to direct  
11 you to the portion of the report to do that?

12 MR. OXFORD: Object to the form.

13 A Well, I think I've already given  
14 you some of the key reasons. But all the  
15 reasons are contained in my report.

16 Q Okay. And it's your opinion that a  
17 share has to settle by the record date in  
18 order for the buyer of the share to be  
19 entitled to a dividend.

20 Right?

21 MR. OXFORD: Objection. Objection  
22 to the form.

23 A Sorry. Can you repeat that  
24 question?

25 Q Sure.

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1           It's your opinion that a share has  
2   to settle by the record date in order for the  
3   buyer to be entitled to a dividend.

4           Right?

5           MR. OXFORD: Same objection.

6           A    My answer to that is: It depends.

7           Q    What does it depend on?

8           A    It depends on all the facts and  
9   circumstances of the case, who the buyer and  
10   seller are, what the nature of the  
11   transaction is, how it's settled.

12          All the facts and circumstances.

13          Q    Why does it depend on who the buyer  
14   and the seller are?

15          A    Well, because without knowing that,  
16   you may not know the nature of the  
17   arrangement between the counterparties, where  
18   do the shares come from, for what purpose was  
19   the buy transaction done, and --

20          (Whereupon a discussion was held  
21   off the record.)

22          MR. OXFORD: Mr. Wade, do you know  
23   where you were in your answer?

24          A    I didn't know I was in an answer,  
25   actually, so sorry.

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1 MR. OXFORD: Mike, would you mind  
2 reading back the question and what  
3 Mr. Wade got through of his answer  
4 before call-in user Number 3 decided to  
5 make his or her presence felt?

6 (Whereupon the record was read back  
7 by the reporter.)

8 A I think I'd just add "and all the  
9 other facts and circumstances."

10 Q Okay. Is it your view that in the  
11 transactions you analyzed in this case that  
12 the transaction date and agreed price terms  
13 of the trades that were executed typically  
14 indicated that the buyer of securities will  
15 receive a dividend?

16 MR. OXFORD: Objection to the form.

17 A Which -- which transactions are we  
18 talking about? Because in each transaction  
19 there are buys and sells.

20 So if you give me a specific  
21 transaction, I'm happy to -- I'm happy to  
22 discuss it.

23 Q I'm asking you whether it's your  
24 view, for cum ex transactions that you  
25 analyzed in this case, that the transaction

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1 date and agreed price terms typically  
2 indicate that the buyer of securities will  
3 receive a dividend?

4 MR. OXFORD: Object to the form.

5 A It's -- it's my position based on  
6 market practice and understanding how the  
7 equity finance markets work that the -- and I  
8 think I've laid this out quite extensively in  
9 my report -- that in a cum ex transaction,  
10 the whole point of a cum ex transaction is  
11 that a -- the seller is not selling the real  
12 dividend because they don't have it.

13 So -- but we'd have to get into a  
14 very specific cum ex transaction and go  
15 through the details of that if you'd like me  
16 to give you a more precise answer.

17 Q Okay. So, as a general matter,  
18 it's not accurate that the transaction date  
19 and the agreed price terms for the cum ex  
20 transactions you analyzed typically indicate  
21 that the buyer of the securities will receive  
22 a dividend?

23 That's my question.

24 MR. OXFORD: Object to the form.

25 A In the specific cum ex transactions

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1       that I have reviewed, it is my opinion that  
2       it is clear that there was no intention to  
3       sell a dividend from the cum ex seller to the  
4       cum ex buyer, not least of which because the  
5       cum ex seller did not, itself, have a  
6       dividend to sell.

7               And that's fairly obvious from all  
8       the facts and circumstances surrounding the  
9       trades, the way they were settled, the way  
10      they were priced, and my experience over many  
11      years of looking at structured financial  
12      transactions.

13           Q     Okay. If the seller in the cum ex  
14      transaction did have the right to a dividend,  
15      is it the case that the transaction date and  
16      the agreed price terms typically indicate  
17      that the buyer of the securities would  
18      receive the dividend?

19           MR. OXFORD: Object to the form.

20           A     Sorry. What transaction are we  
21      talking about? Are we talking about a cum ex  
22      transaction?

23           Q     Yes. In the cum ex transactions,  
24      if the buyer -- sorry -- if the seller of the  
25      shares did have the right to a dividend when

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1       it sold the shares, would it be the case that  
2       the transaction date and agreed price terms  
3       would typically indicate that the buyer of  
4       securities will receive the dividend?

5               MR. OXFORD: Objection to form.

6           A     No.

7           Q     It's not?

8           A     Sorry?

9           Q     I just want to confirm -- I tried  
10       to confirm that you said it's not the case  
11       that the transaction date and the agreed  
12       price terms would typically indicate that the  
13       buyer would receive a dividend?

14          A     That's correct. Because the -- the  
15       very nature of a cum ex transaction is that  
16       what the seller is agreeing to do is to  
17       deliver ex-dividend shares, using the  
18       definition of cum ex in my report.

19               So what the -- what the arrangement  
20       is is an arrangement to deliver ex-dividend  
21       shares, which, by that point, will not have a  
22       right to a dividend attached to them anymore.

23          Q     Okay. Would it surprise you that  
24       someone wrote in your report that you signed  
25       that in a cum ex transaction, "the

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1 transaction date and agreed price terms  
2 typically indicate that the buyer of the  
3 securities will receive the dividend?"

4 MR. OXFORD: Objection, object to  
5 the form. You can answer.

6 A Can you -- can you direct me to  
7 where in my report it says that?

8 Q Yeah, Paragraph 25.

9 MR. OXFORD: This is Exhibit 5001,  
10 Greg?

11 MR. PRUDEN: Yeah. It's the same  
12 exhibit we've been on the whole time.

13 MR. OXFORD: Oh, I didn't realize  
14 we were on an exhibit the whole time.

15 A Well, I think if I -- if I read  
16 back the whole sentence, it says, "As  
17 described more fully below, in a cum ex  
18 transaction, the transaction date and agreed  
19 price terms typically indicate that the buyer  
20 of the securities will receive the dividend,  
21 but the settlement cycle is extended, so the  
22 buyer of the securities does not receive the  
23 shares until after the record date, and so  
24 the buyer does not actually receive the  
25 dividend."



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1                   So I don't know what -- I think  
2           that's entirely consistent with what I said a  
3           few minutes ago.

4           Q     And your understanding is that the  
5           buyer doesn't receive a dividend because the  
6           settlement cycle of the shares is extended so  
7           the buyer of the securities does not receive  
8           the shares until after the record date.

9                   Is that right?

10           MR. OXFORD: Object to form.

11           A     That's in respect of the overall  
12           cum ex transaction. That's not the only  
13           reason why I understand that.

14                   But that is -- that is an important  
15           element of that understanding, yes.

16           Q     Okay. Well, is that the only  
17           reason to determine that the buyer doesn't  
18           receive a dividend in these transactions you  
19           analyzed?

20           MR. OXFORD: I'm sorry, Greg. The  
21           audio was bad on our end.

22                   Would you mind repeating the  
23           question?

24           MR. PRUDEN: Sure.

25           Q     I asked: Is that a sufficient

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1 reason to determine that the buyer doesn't  
2 receive a dividend in the cum ex transactions  
3 that you analyzed? Is that fact, standing  
4 alone, a sufficient reason?

5 MR. OXFORD: Object to the form.

6 A I think my -- my conclusions as  
7 regards the overall transactions in this case  
8 are based on the full facts and  
9 circumstances.

10 But my point is that the very  
11 nature and essence of the design of a cum ex  
12 transaction is that it is designed to deliver  
13 ex-dividend shares. That is -- that's the  
14 fundamental nature of a cum ex transaction.

15 So it's almost inherent in what the  
16 nature of a cum ex transaction is that it is  
17 the seller -- if anyone, the seller may not  
18 receive the dividend because they may, like  
19 in these transactions, be selling short.

20 But it is not the buyer who is  
21 going to receive the dividend. That sort of  
22 is the whole point of a cum ex transaction.

23 That's my -- that's my opinions as  
24 in this report and it's also based on, you  
25 know, market practice.

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1 Q Okay. And so your opinion in this  
2 case is based on the view that all cum ex  
3 transactions necessarily involve shares to  
4 which there's not a dividend right?

5 MR. OXFORD: Objection to form.

6 A Based on the definition of "cum ex"  
7 that I've used in my report, that -- yeah.

8 Q Okay. And so that your conclusion  
9 relies on your own definition of "cum ex"  
10 that you've used in your report?

11 A I don't think it's my -- I don't  
12 think it's my own definition. I think it is  
13 an accepted market definition of what a  
14 cum ex transaction is.

15 Q Okay. And what's your -- what's  
16 your basis for your definition in the market  
17 of what a cum ex transaction is?

18 MR. OXFORD: Object to the form.

19 A Well, I think it's -- you know,  
20 based on my experience over the course of my  
21 career, the -- it's my understanding that  
22 across a wide range of market participants  
23 that that is -- if you refer to a cum ex  
24 transaction, what people understand that to  
25 mean is a transaction where you're going to

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1 execute a trade before the trade date, but  
2 only deliver ex-dividend shares.

3 Q Okay. And is your only basis for  
4 stating that ex-dividend shares were  
5 delivered that the shares were delivered  
6 after the record date?

7 MR. OXFORD: Object to the form.

8 A No, because -- and again, what  
9 does -- what does "delivered" mean? That's a  
10 slightly imprecise term.

11 But in the transactions in this  
12 case and for all the reasons given in the  
13 report, including the way they were  
14 settled -- the pricing, who the  
15 counterparties were, the nature of all the  
16 arrangements -- it is clear to me that what  
17 the parties intended to do was have a  
18 contract where the cum ex seller had agreed a  
19 trade under which they were going to deliver  
20 ex-dividend shares.

21 That's -- that's my opinion.

22 Q Mr. Wade, I used your term. You  
23 said, "What people understand that to mean is  
24 a transaction where you're going to execute a  
25 trade before the trade date but only deliver

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1 Q Sorry, I --

2 MR. OXFORD: Hold on. Greg, you  
3 asked him the question. Please let him  
4 finish.

5 A Sorry. Can we have the question  
6 back again, please?

7 Q I'll ask another question.

8 Is it your assertion that all  
9 cum ex sales are short sales?

10 MR. OXFORD: Objection. You can  
11 answer.

12 A By that question, do you mean  
13 generally or in the context of the specific  
14 transactions which I've given opinions on?

15 Q Let's start generally first.

16 Is it your assertion generally that  
17 all cum ex sales are short sales?

18 MR. OXFORD: Object to the form.

19 A I couldn't possibly give an opinion  
20 on all cum ex sales that have ever been done,  
21 but my point earlier is that, in my  
22 experience, it would be somewhat unusual to  
23 do a cum ex sale, because the only situation  
24 which, in all my market experience I've ever  
25 seen a cum ex sale being done, is in order to

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1 give rise to a tax reclaim on a contract,  
2 which is the contract for delivery of  
3 ex-dividend shares.

4 And if someone were long  
5 immediately before doing a cum ex, so they  
6 were doing a cum ex out of a long position,  
7 that is not an impossible thing to happen,  
8 but it would be a quite unusual thing to be  
9 done.

10 Q And what's the basis for that  
11 testimony?

12 A The basis for that testimony is  
13 being responsible and working in the  
14 structured finance industry for many years.

15 Q Have you ever executed cum ex  
16 transactions yourself?

17 A No.

18 Q Have you, as far as you're aware,  
19 worked for an institution that ever entered  
20 into cum ex transactions?

21 MR. OXFORD: Object to form.

22 A I believe it's a matter of public  
23 record that Barclays has executed cum ex  
24 transactions, but limited to -- as I say in  
25 my report, the nature of cum ex transactions

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1 changed significantly, so not in 2012.

2 In my experience, prior to my  
3 involvement in this case, it was only ever my  
4 understanding that cum ex transactions were  
5 executed in Germany and prior to the various  
6 legislative changes that were made in  
7 Germany.

8 Q Okay. So you, prior to this case,  
9 had no understanding of cum ex transactions  
10 being executed in any context other than in  
11 the German market prior to 2012.

12 Is that right?

13 MR. OXFORD: Object to the form,  
14 misstates his testimony.

15 A Yeah. My answer was, I think, that  
16 Barclays, to my knowledge, only undertook  
17 cum ex transactions prior to the legislative  
18 changes in Germany and only ever undertook  
19 them in respect of German shares, the reason  
20 for that being that based on my market  
21 experience and extensive understanding of the  
22 European securities, no market participant or  
23 advisor who I ever dealt with ever considered  
24 the outside of those parameters, that a  
25 cum ex transaction was effective.

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1                   So maybe they executed them  
2     in -- nobody at Barclays would have executed  
3     them. Let's put it that way.

4           Q     Okay. And so is your familiarity  
5     with cum ex transactions limited to the  
6     manner in which Barclays has executed them?

7           MR. OXFORD: Object to the form.

8           A     No. I -- over the course of my  
9     time at Barclays, you are not just aware of  
10    transactions that Barclays is executing. You  
11    are aware of a wide range of practice going  
12    on in the market.

13          Q     Okay. Well, what other executions  
14    of cum ex transactions are you aware of in  
15    the market?

16          MR. OXFORD: Object to form.

17          A     I think my -- my point is that up  
18    until no later than the beginning of 2012,  
19    there were a wide range of  
20    counterparties -- I think this is a matter of  
21    public record -- who were undertaking cum ex  
22    transactions in Germany based on their  
23    understanding of a very specific procedural  
24    rule, but that outside of Germany and outside  
25    of that very specific procedural rule, there



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1 was no basis for thinking that a cum ex  
2 transaction in any other jurisdiction would  
3 be effective.

4 Q Okay. I asked you whether you're  
5 aware of any other cum ex transactions in the  
6 market other than the transactions you've  
7 just described.

8 MR. OXFORD: If that's the  
9 question, I'm going to object to the  
10 form of it. It seems like a statement.

11 Are you asking the question again?

12 MR. PRUDEN: Yeah, I'll ask it as a  
13 question.

14 Q Are you aware of any other cum ex  
15 transactions in the market other than what  
16 you've just described?

17 MR. OXFORD: Objection to the form.

18 A As I think I've explained, and as I  
19 refer to, it's referred to in the ESMA report  
20 that I cite in my report.

21 I think any market participant  
22 prior to 2012 who was significantly involved  
23 in the equity finance market was aware that  
24 there were a large number of financial  
25 institutions who were involved in cum ex

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1 transactions in respect of Germany, but  
2 Germany only.

3 Q Okay. Can you tell me anything  
4 about cum ex transactions that is not  
5 otherwise a matter of public record?

6 MR. OXFORD: Object to form.

7 A I don't really understand the  
8 question you're -- you're asking.

9 Q Okay. Can you tell me anything  
10 about how cum ex transactions were executed  
11 in the market that is not contained in a  
12 public record?

13 MR. OXFORD: Object to the form.

14 A I genuinely don't know what  
15 your -- what you're expecting me to say to  
16 that. I'm saying it's a matter of public  
17 record. I was not personally involved, but  
18 it's a matter of public record that Barclays  
19 executed certain cum ex transactions.

20 As I'm sure you're aware, there are  
21 a number of ongoing investigations and  
22 litigations into -- in respect of all those  
23 transactions by a wide range of market  
24 participants. What I'm telling you is that,  
25 at the time, there were a number of large

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1 financial institutions, hedge funds, and  
2 other counterparties who were executing  
3 cum ex transactions.

4 But it is my -- based on my market  
5 practice and understanding and my personal  
6 knowledge, I was not aware of anyone who  
7 either -- prior to my involvement in this  
8 case, I was not aware of anyone who,  
9 post-2012 outside Germany, thought that a  
10 cum ex transaction was effective.

11 That's the substance of my  
12 testimony on that point.

13 Q Okay. And in all your experience,  
14 at any point, was there any aspect of your  
15 job in which you were involved in either  
16 executing, overseeing, or approving cum ex  
17 transactions?

18 MR. OXFORD: Objection to form.

19 A To the best of my knowledge, no.

20 Q Okay.

21 MR. PRUDEN: Why don't we take that  
22 lunch break now and then we can come  
23 back in a half-hour or so.

24 MR. OXFORD: Okay. Say in half an  
25 hour. Thanks, Greg.

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1 cum ex seller was long at the time where it  
2 entered into the cum ex sale.

3 Is that -- my understanding of your  
4 assumption correct?

5 Q Well, I'm not going to agree that  
6 that's different from the facts, but that's  
7 the assumption I'm asking you to assume.

8 A Okay. Understood.

9 That would not change my ultimate  
10 opinion conclusion that the information on  
11 the tax vouchers was incorrect.

12 Q Okay. And what information on the  
13 tax vouchers would have been incorrect in  
14 that circumstance?

15 MR. OXFORD: Object to form.

16 A All -- all three. All three of the  
17 key items on the tax voucher would still be  
18 incorrect.

19 Because the cum ex purchaser did  
20 not own the shares on the record date, it did  
21 not receive the dividend, and it did not  
22 suffer the tax.

23 Q Okay. What is the basis for your  
24 assertion that in any circumstance, a  
25 purchaser must own the shares on the record

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1 date in order to be entitled to the dividend?

2 MR. OXFORD: Object to the form.

3 A The -- there are a range of reasons  
4 why I would reach that conclusion, that  
5 amongst those is the fact that based on, you  
6 know, my extensive market practice of  
7 situations like this, what the -- in the  
8 assumed facts that you've given, it's still  
9 the case that what the cum ex purchaser has  
10 been given is a dividend compensation  
11 payment.

12 And based on my experience, what  
13 would have -- what could have been  
14 appropriate is if the cum ex -- a purchaser  
15 had been given a voucher which said, "You  
16 received a dividend compensation payment."

17 That -- that -- but that's not what  
18 the tax vouchers state that they are.

19 Q And what in your extensive market  
20 practice experience leads you to believe that  
21 the payment that's made by a seller to a  
22 buyer in the hypothetical I just described  
23 would not be considered a dividend?

24 MR. OXFORD: Objection to form.

25 A Well, because it is definitionally

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1 a manufactured payment. And you know,  
2 amongst other things, I cited to the HMRC  
3 rules on manufactured dividends.

4 And as I've said in my report, that  
5 distinction was well understood by market  
6 participants and it made an important  
7 difference in a number of different  
8 situations, not least obligations on filing  
9 manufactured overseas dividends returns,  
10 which, in the relevant period, I assume that  
11 ED&F Man must have had to do because it was  
12 subject to those rules.

13 Q Okay. And so it's your testimony  
14 you know -- withdrawn.

15 On my hypothetical, do you have an  
16 opinion on whether the pension plans would  
17 have had an entitlement to a tax reclaim?

18 MR. OXFORD: Object to the form.

19 A And I assume you mean a tax reclaim  
20 in Denmark?

21 Q Yes, a tax reclaim in Denmark.

22 MR. OXFORD: Same objection.

23 A On -- on the facts that you've  
24 asked me to assume, it's my opinion that what  
25 the pension plan received was a dividend

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1 compensation payment.

2 If -- and I express no opinion on  
3 this because I'm not expressing opinions on  
4 Danish tax -- if the pension plan were able  
5 to take a receipt for a dividend compensation  
6 payment to the Danish tax authorities and  
7 make a reclaim, if you -- you know, if that's  
8 something that were possible, it would be  
9 highly surprising to me, based on market  
10 practice and, you know, my involvement in the  
11 European securities market, including  
12 understanding, you know, quite a lot about  
13 different tax regimes in that market, it  
14 would be very surprising.

15 But if it was the case that a  
16 receipt for a dividend compensation payment  
17 entitled you to a tax reclaim in Denmark,  
18 that's not something I've offered an opinion  
19 on.

20 Q Okay. But you would agree that  
21 whether or not what you described as a  
22 "dividend compensation payment" would entitle  
23 you to a tax reclaim in Denmark is a matter  
24 of Danish law.

25 Right?

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1 one.

2 A Okay. Sorry.

3 Q Settlement date is record date plus  
4 one.

5 A Yeah. Okay. And what was the  
6 other --

7 Q The seller is long, has a long  
8 position in the share as of the day before  
9 the ex date, the trade date.

10 A Yeah.

11 Q Clear? And the price of the  
12 transaction is sold at a cum dividend price.

13 Clear?

14 A Okay.

15 Q The seller makes a payment to the  
16 buyer equal to the amount that the seller  
17 received from the issuer as a dividend.

18 Is that clear?

19 MR. OXFORD: Object to the form.

20 A Well, I think you've -- you said  
21 the seller makes a payment as a dividend. I  
22 think the only entity that can make a payment  
23 as a dividend is the issuer.

24 So are you saying that the  
25 seller -- are you saying that the seller has



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1       agreed, as some kind of trustee relationship,  
2       to pass on the dividend?

3               I don't understand what that final  
4       piece is.

5           Q     No. Okay. Let's take it in two  
6       steps.

7               The seller first receives a  
8       dividend from the issuer.

9               Okay?

10          A     Yeah.

11               MR. OXFORD: Objection.

12          Q     Okay. And then the seller makes a  
13       payment to the buyer equal to the amount of  
14       the dividend that they received.

15               Clear?

16               MR. OXFORD: Objection to the form.

17          A     I think I'm clear on the payments  
18       that are made, yeah.

19          Q     Okay. In those circumstances, is  
20       the payment that the seller made to the buyer  
21       a dividend or a dividend compensation  
22       payment?

23               MR. OXFORD: Object to form. Asked  
24       and answered.

25          A     Well, I think you've, you

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1           Q     Okay. And is a "market claim" a  
2     dividend compensation payment or a dividend?

3           MR. OXFORD: Object to the form.

4           A     It does depend on the specific  
5     facts and circumstances of the position. But  
6     in general, the more common uses of "market  
7     claim" is when a transaction has failed, and  
8     so the person who thought they were buying a  
9     dividend does not get that dividend as a  
10    result of a fail, and then a payment is  
11    passed along to them.

12           That's -- that's my understanding,  
13    and I think it's the market definition of a  
14    market claim. But ultimately, market claim  
15    says it's to the person who's contractually  
16    entitled.

17           So you have to understand the  
18    nature of the securities transaction to work  
19    out whether there should be a market claim,  
20    and if so, what the nature of that market  
21    claim is.

22           Q     Okay. And you mentioned T2S.

23           As far as T2S is concerned, are you  
24    aware of whether there's a general consensus  
25    in T2S about what happens when the trade date

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1 is prior to the ex date, the intended  
2 settlement date is after the record date, and  
3 the settlement instruction is also matched  
4 after the record date and the payment date  
5 for the security?

6 Is a market claim  
7 considered -- going back, does that  
8 circumstance give rise to a market claim?

9 MR. OXFORD: Object to the form.

10 A So we have a cum ex sale -- we have  
11 a cum ex sale or a regular way sale?

12 Q We have a situation where the trade  
13 date is prior to the record date and the  
14 intended settlement date is after -- sorry.  
15 Withdrawn.

16 We have a situation where the trade  
17 date is prior to the ex date and intended  
18 settlement date is after the record date.

19 A Okay. I think, as I've explained  
20 in my report, that -- and it settles as  
21 expected -- am I allowed to assume that?

22 Q Yes, you can. Yes.

23 A Okay. In that case, no, I don't  
24 think that would meet the definition of a  
25 market claim.

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1 "liable" means, who's -- who's the person  
2 receiving the dividend, what -- what country  
3 are they in, you know, are they a Danish tax  
4 resident, are they a non-Danish tax resident.  
5 There are a number of factors.

6 But if your question is if I -- if  
7 I received directly a real dividend and  
8 27 percent tax is withheld on it, is that tax  
9 that I have suffered, yeah, my understanding  
10 is that yes, I have suffered that tax.

11 Q Okay. And if you have special tax  
12 status, you can reclaim that tax from the  
13 Danish government.

14 Right?

15 MR. OXFORD: Object to the form.

16 A That all depends on the facts and  
17 circumstances around the transaction.

18 Q Okay. Well, assuming that the  
19 person who receives -- withdrawn.

20 Assuming that the person who  
21 applies for the tax refund is the beneficial  
22 owner of the dividend, they can receive a  
23 reclaim from the Danish government if they  
24 are entitled to some kind of special tax  
25 status.

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1 Right?

2 MR. OXFORD: Object to the form.

3 A So, as I think we've discussed  
4 earlier, it's -- it's not my place here and  
5 today to express an opinion on the Danish tax  
6 law and exactly what a given holder of  
7 dividend is entitled to physically via the  
8 Danish tax authorities.

9 So, in general terms, no other  
10 arrangements or unusual circumstances, that  
11 would be one of the starting point conditions  
12 I understand are making a reclaim. But I'm  
13 not expressing a view on the exact  
14 requirements of any Danish tax process.

15 Q Okay. And second, would you be  
16 able to determine whether particular  
17 individuals are subject to certain tax status  
18 within Denmark?

19 MR. OXFORD: Object to the form.

20 A In my -- in my -- my reports have  
21 been focused on the transactions and whether,  
22 amongst other things, the tax vouchers  
23 produced were accurate, what the consequence  
24 is, and how those tax vouchers could be used,  
25 and what rights of any given person may have

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1 or may not have vis-a-vis the Danish tax  
2 authorities is not something I've given an  
3 opinion.

4 Q Because you're not an expert on  
5 what tax status individuals have with respect  
6 to tax reclaim applications to the Danish  
7 government.

8 Right?

9 MR. OXFORD: Object to the form.

10 A I think that's a slightly different  
11 formulation. I'd say that based on my market  
12 practice and experience, you know, I -- I  
13 have some understanding of some of the basic  
14 requirements for these kind of situations.

15 But on the specific point of, you  
16 know, if you tell me that in a situation  
17 where the person didn't receive -- didn't  
18 actually have the shares, didn't receive a  
19 dividend, didn't actually suffer tax, that  
20 nevertheless it is possible under Danish tax  
21 law to make a reclaim, I find that very  
22 surprising.

23 But that is not an opinion on which  
24 I've -- you know, I'm not expressing an  
25 opinion on that final point.

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1 general that there are some shareholders of  
2 Danish shares who are entitled only to  
3 73 percent of the gross dividend paid under  
4 Danish law.

5 Correct?

6 MR. OXFORD: Object to the form.

7 A Generally in the whole world are  
8 there any shareholders who, on receiving a  
9 Danish dividend, suffer 27 percent  
10 withholding and cannot recover it? I would  
11 agree that in general that -- yeah, I would  
12 be very surprised if that wasn't the case.

13 Q Okay. In those circumstances, for  
14 that party, it would be rational for that  
15 party to sell its dividend right to a party  
16 with entitlement to either the tax at the  
17 zero percent or 15 percent tax rate as long  
18 as they sold the dividend for greater than  
19 73 percent of the gross dividend amount.

20 Right?

21 MR. OXFORD: Object to form.

22 A No. Obviously, it depends on who  
23 the shareholder is and what their  
24 circumstances are.

25 But if they were a sophisticated

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1 financial institution who was active in the  
2 equity finance markets, and the market level  
3 for dividend compensation payments at that  
4 particular point in time was 90 percent of  
5 the gross dividend, it would be an irrational  
6 transaction for them to sell at any number  
7 above 73. It would be irrational for them to  
8 sell at any level below 90 if, on my  
9 assumption, the prevailing market level is  
10 90.

11 Q And is your assertion that the  
12 market level is 90 based on anything other  
13 than the price that you observed for the  
14 cum cum transactions?

15 MR. OXFORD: Object to the form.

16 A Yes. It's, you know, the -- in the  
17 course of my experience, particular markets  
18 in Europe at particular points in time tend  
19 to have a general level around which they  
20 trade.

21 And based on my experience,  
22 90 percent, give or take, tends to be the  
23 ballpark for a number of -- a number of  
24 markets.

25 Q What markets in Europe form the



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1 basis for your experience?

2 A Sorry?

3 Q Which markets in Europe form the  
4 basis for your experience?

5 A Well, I can't remember the full  
6 list of markets. But, you know, in my time  
7 at Barclays, Barclays traded positions across  
8 nearly all the active main indices in Europe,  
9 so that certainly includes Denmark.

10 Q Are you relying on any other  
11 experience beyond Barclays or any other  
12 sources besides experience for that  
13 90 percent figure you cite?

14 MR. OXFORD: Objection to form.

15 A The first thing that I just want to  
16 be clear on is that the 90 percent is not a  
17 hard and fast number. And as I said, it can  
18 vary across market and it can vary across a  
19 particular dividend event, and I think I've  
20 made that point clear in my report.

21 But at the relevant time, I was  
22 working at Barclays and had responsibility  
23 for Barclays' equity finance activity, or at  
24 least a large portion of it. And based on  
25 that experience, it's my understanding that,

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1 at that time, the market level in Denmark was  
2 somewhere around 90 percent.

3 Q Are you aware of any other entities  
4 besides pension plans who would have an  
5 economically rational basis to acquire a  
6 dividend at 90 percent of the gross dividend  
7 rate in Denmark?

8 MR. OXFORD: Object to the form.

9 A Yes.

10 Q Who else besides pension plans?

11 A Well, any range of financial  
12 institutions might want to acquire dividends  
13 at that level. Danske Bank, for example, was  
14 active in the European equity finance market.

15 I don't know the exact position of  
16 Danske Bank, but I would think that the  
17 dividend would almost be certainly worth at  
18 least 90, if not a hundred to them. Both  
19 European and U.S. financial institutions  
20 would almost certainly have been able to  
21 obtain value for 85.

22 In many cases, they were -- they  
23 also may well have been able to achieve a  
24 hundred, not necessarily through a tax  
25 reclaim, but through other mechanisms

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1 involving foreign tax credit relief.

2 So I would think there would be a  
3 wide -- the reason the market was around 90  
4 is because there are some tax disadvantaged  
5 people and some tax advantaged people, and  
6 the tax disadvantaged people are going to  
7 want to earn as much as they can for selling  
8 their dividends, and the tax advantaged  
9 people are going to want to pay as little as  
10 they can to acquire dividends.

11 And the market is a reflection of  
12 the aggregate supply and demand at any given  
13 time. And that's what sets the level.

14 Q Okay. And the level depends on the  
15 number of people who are tax advantaged and  
16 non-tax advantaged.

17 Right?

18 MR. OXFORD: Object to the form.

19 A In general terms, that's -- yeah,  
20 that's one of the factors, yeah.

21 Q Okay. And can you explain to me  
22 the process by which a non-pension plan could  
23 recover a hundred percent by use of foreign  
24 tax credit relief?

25 A Well --

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1           A     It's actually -- and I can tell  
2     this from the -- the legend at the top, it's  
3     actually a copy of that memo that was  
4     submitted on a voluntary basis to HMRC.

5           Q     Okay. Have you seen this before?

6           A     Yes, I believe I have.

7           Q     And I just want to represent to you  
8     that this was a document taken off the  
9     Internet and the green highlighting was there  
10    when it was taken off. So that is not  
11    something that we highlighted on purpose.  
12    That's how it came out.

13                   So are you familiar, then,  
14    Mr. Wade, with the contents of this document?

15           A     I'm not fully familiar with all the  
16    details of it. But the reason I recognize  
17    this document is, as I said, it was submitted  
18    to the U.K. tax authorities and the German  
19    tax authorities, and then it was subject of a  
20    leak, and I -- I recall because at the time  
21    of that leak, I was, I believe, the global  
22    head of SCM.

23                   So I have seen this memo before in  
24    that context.

25           Q     Okay. And you are familiar with

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1 the fact that Barclays engaged in cum ex  
2 trading in Germany.

3 Correct?

4 MR. OXFORD: Object to the form.

5 A I think I've already said it's a  
6 matter of public record that yes, Barclays  
7 undertook cum ex transactions in Germany --

8 MR. OXFORD: Hold on, Sharon. He  
9 wasn't finished with his answer.

10 Please continue, Mr. Wade.

11 A Undertook transactions in Germany  
12 prior to 2012.

13 Q Okay. And are you aware that in  
14 connection with that, Barclays was a short  
15 seller?

16 MR. OXFORD: Object to form.

17 A If I can just --

18 MR. OXFORD: Yeah, take a moment to  
19 review the memo if you need it to answer  
20 the questions, Mr. Wade.

21 A (Witness reviewing.)

22 MR. OXFORD: Sharon, there's a lot  
23 of background noise where you are. We  
24 didn't have the problem with the other  
25 examiners.

**ERRATA SHEET**

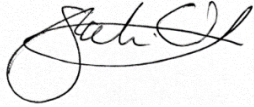
Case Name: In Re: Customs and Tax Administration of The Kingdom of  
Denmark (Skatteforvaltningen) Tax Refund Scheme Litigation  
Case Number: 18-md-2865  
Deponent: Graham Wade  
Deposition Date: March 16, 2022

<b>PAGE</b>	<b>LINE</b>	<b>ORIGINAL TEXT</b>	<b>CORRECTED TEXT</b>	<b>REASON FOR CHANGE</b>
24	12	obtain review	obtain and review	Transcription error
40	12-13	corporate finance manual	Corporate Finance Manual	Clarification
42	8	Unfortunately	Fortunately	Transcription Error
77	10	party	parties	Transcription Error
103	6	issues	issuer's	Transcription Error
117	11	the date	the trade date	Clarification
120	24	completed until on trade date	completed on the trade date	Transcription Error
127	3	tax group claim	tax reclaim	Transcription Error
163-164	22-1	it's a matter of public record that Barclays has executed cum ex transactions, but limited to -- as I say in my report, the nature of cum ex transactions changed significantly, so not in 2012.	it is a matter of public record that Barclays executed cum ex transactions but limited to the period before 2012 when the rules relating to German transactions changed significantly.	Transcription Error/Clarification
171	10	opinion conclusion	opinion and conclusion	Clarification
177	23	working group tax	working with group tax	Clarification

<b>PAGE</b>	<b>LINE</b>	<b>ORIGINAL TEXT</b>	<b>CORRECTED TEXT</b>	<b>REASON FOR CHANGE</b>
209	2, 5, 17	Cult	Colt	Transcription Error
211	1	Renaissance phrase	Renaissance transactions	Transcription Error
211	25	Cult	Colt	Transcription Error
214	7	Cult	Colt	Transcription Error
218	25	Nason Square and Flowana	Renaissance Technologies	Transcription Error
219	25	“SCMUS Prudence Committee”	“SCM US Approvals Committee”	Transcription Error
220	22	Cult	Colt	Transcription Error
221	7	LaRosa	LaRocca	Clarification
224	11	Cult	Colt	Transcription Error
225	25	referenced	represented to us	Transcription Error
226	12	Cult	Colt	Transcription Error
226	25	Pact	pack	Transcription Error
237	24	would be simply a trade receiver	would simply be a trade taker	Transcription Error/Clarification
240	7	Bluebird	Bloomberg	Transcription Error
254	23-24	rule, in title straight requires to issue	rule, entitled/required to issue	Transcription Error
258	13	say	see	Clarification

I declare under penalty of perjury under the laws of the United States of America that I have read the entire transcript of my deposition taking in the above captioned matter and the same is true and accurate, save and except for the changes and/or corrections as indicated by me on the deposition errata sheet hereof, with the understanding that I offer these changes as if still under oath.

Executed this 18th day of April, 2022

A handwritten signature in black ink, appearing to read "Graham Wade", is written over a light gray rectangular background.

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Graham Wade